

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7073 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

and

MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
  2. To be referred to the Reporter or not? Yes.
  3. Whether Their Lordships wish to see the fair copy of the judgement? No.
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
  5. Whether it is to be circulated to the Civil Judge? No.

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AGRICULTURE PRODUCE MARKET COMMITTEE

Versus

COLLECTOR

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Appearance:

MR KG VAKHARIA for Petitioner

MR SOMPURA for Respondent No. 1

MR BR SHAH for Respondent No. 3

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CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE Y.B.BHATT

Date of decision: 09/10/96

ORAL JUDGEMENT(Per Soni,J.)

By this petition under Article 226 of the Constitution of India, petitioner-Agricultural Produce Market Committee body corporate under Section 10 of the Gujarat Agricultural Produce Markets Act,1963 ("Markets Act" for short) has prayed for a writ of mandamus or a writ in the nature of mandamus or any other appropriate

writ, order or direction to quash orders Annexure "A" dated 1st February, 1979 passed by the Collector, Valsad, Annexure "J" dated 6th June, 1980 signed by the Section Officer, Revenue Department for and on behalf of the Special Secretary, Revenue Department and Annexure "K" dated 28th September, 1984 signed by the Section Officer by order and in the name of the Governor of Gujarat.

By order Annexure "A" land bearing Survey no.4B admeasuring 2 acres 37 gunthas of town Gandevi was acquired for the petitioner-Committee and the award for the same was declared on 31st July, 1963. Accordingly, the possession of the said land was handed over to the petitioner-Committee. The petitioner-Committee was carrying out its activities of agricultural produce on the said land. Thereafter, in the meeting of 30th December, 1971 the petitioner-committee proposed to let out the said land to Agro Industries Cold Storage Limited, the subsidiary of Gujarat Agro Industries Corporation Ltd. as they had decided to instal a canning factory there in Gandevi for a period of 99 years on a rental of Rs.3000/-. The petitioner-Committee then obtained necessary permission to grant lease to the said Gujarat Agro Industries Corporation vide order dated 29th December, 1972 of the Collector, Valsad. Thereafter, Gujarat Agro Industries Corporation Limited wanted to change the name of lessee and that also came to be granted by the Collector by his order of 7th May, 1974 and allowed to substitute the words M/s. Gujarat Agro Food Ltd. in place of " Gujarat Agro Industries Corporation Limited." The petitioner, then, accordingly resolved for change of name in its meeting on 12th March, 1973. Thereafter, canning activity was going on and on 7th February, 1977, the petitioner received a notice from Mamlatdar, Gandevi to surrender the said land let out to M/s. Gujarat Agro Food Limited and if they did not consent to surrender, the said land would be forfeited on the ground of breach of condition. They fixed the date of hearing 9th February, 1977. It is pertinent to note that in this very notice, it is stated that compensation in respect of the land will be paid at the present market rate by one M/s. Gujarat Food Products Ltd. The said M/s. Gujarat Food Products Limited appears to be the third Company than one to whom the petitioner has let out the premises and has also changed the name of the Company as per the request of Gujarat Agro Industries Corporation Ltd. The petitioner-Committee on 9th February, 1977 prayed for time as the Chairman was not available and requested the Mamlatdar, Gandevi to communicate them the adjourned date of a week later. It appears that nothing happened thereafter and on 1st February, 1979, the

petitioner-committee received an order declaring that the said land vests in Government on the ground that they have committed breach in respect of the land bearing Survey no.4B of Gandevi, Taluka Gandevi. The petitioner-Committee being aggrieved by the said order preferred an Appeal/Revision before the Special Secretary, Revenue Department. However, the said Appeal/Revision was returned back to the petitioner-committee with the remarks that there is no provision to hear Appeal/Revision by the Special Secretary inasmuch as the order of 1st February, 1979, an impugned order, is passed by the Collector on instructions from the Government. Even no personal hearing was given before passing the said order. After passing that order of 6th June, 1980 by the Special Secretary in the name of Governor a lease for a period of 7 years at the rate of 15% of the market rate in respect of land bearing Survey no.4B admeasuring 2 acres 37 gunthas was granted to Gujarat Agro Food Limited for installing canning factory and for constructing godown. Thus, orders, namely, vesting land in the Government, returning Appeal/Revision back to the petitioner and grant of lease by the Government to Gujarat Agro Foods Limited are under challenge in this petition.

The respondent no.1 has filed affidavit-in-reply to the petition and it will be appropriate to refer to the relevant extracts from paragraph 5 onwards of the reply which reads as under:

"Revenue Department had given instructions vide letter dated 4th December, 1978 to resume the land in Government and accordingly the order was passed vide this office's order no.ch/Land/Ws.198/78 dated 1st February, 1979"

It is further stated that.....  
" the land was resumed to Government as no permission was obtained legally by the A.P.M.C. before leasing the same to Gujarat Agro Industries Corporation Ltd. The land was acquired for A.P.M.C. in larger interest of the farmers with regard to agricultural produce. The A.P.M.C. did not use the land for marketing yard etc. and by handing over land to Gujarat Agro Corporation the land is used for canning factory and godown. Moreover, the canning of fruits which is processing does not come within the scope of the functions of A.P.M.C. generally, as it is not a processing body, therefore the purpose of acquisition and occupant changed. Therefore, breach of condition took place in this case and at last the land was resumed to Government.".....It is true that before

passing the order dated 1-2-79, the interested parties were not heard by the then Collector. However, the petitioner and the respondent no.3 can jointly apply to the State Government with a prayer to regularize the said transaction. Since the Gujarat Agro Foods Ltd. is in possession of land. It can also pray for extension of lease for further more period as the lease period of 7 years is over."

In view of the averments made in the petition and reply filed by respondent no.1 in our opinion, this petition can be disposed of on the following grounds only, namely, (i) that the order Annexure "A" dated 1st February, 1979 is not legal and proper in as much as there are no legal basis or premises on which the same can be passed and (ii) that there is no provision under the Land Acquisition Act to revoke the acquisition and get the land vested back in the Government and (iii) the Collector has no authority to pass such an order Annexure "A" merely on the administrative instructions from the Government without any authority flowing from the statute.

It may be made clear that the Government acquired the land bearing Survey no.4B admeasuring 2 acres 37 gunthas of village Gandevi for the petitioner-Committee. They paid the necessary compensation amount as awarded by the Collector. The petitioner-Committee had also paid necessary additional compensation as was fixed by the District Court on reference by the aggrieved party. Thus, in our opinion, it can be said that the land on acquisition vested absolutely with the petitioner-committee and they have become the owner of the land. If one reads Annexure "A" dated 1st February, 1979, the same came to be passed after issuance of notice by the Mamlatdar on 7th February 1977. In the said notice (letter) of the Mamlatdar, the petitioner-Committee was called upon to surrender the land. It is stated therein that the compensation will be paid at the present market rate by the Gujarat Food Products Ltd. It is surprising as to how and under what provisions of law the Mamlatdar issued such a notice. After acquisition of the land for the petitioner-committee, they have paid the necessary compensation and having been put in possession have become the owner of the land. No person can be deprived of his property without authority/ process of law. If the Government wanted to take back the possession of the land, they could have followed the necessary procedure of compulsory acquisition. Instead, they have simply called

upon the petitioner-committee to surrender the land saying, the compensation in respect of which will be paid by some party, namely, Gujarat Food Products Ltd. From the letter of the Mamlatdar, it is also clear that if the petitioner does not give consent, then, the land will be forfeited on the ground of breach of condition. Though the petitioner-committee prayed for time for personal hearing the same is not granted to them. That apart, from the letter of Mamlatdar it appears that the petitioner-committee was called upon to remain present personally but as the President or the Chairman as they call was not available on that day, the petitioner-committee asked for time. Instead of communicating to the petitioner-committee about the date of hearing after about a period of two years, they have passed order Annexure "A". The question, therefore is, when the land is acquired in accordance with law, is it legal and proper that land be ordered to be vested in the Government on the ground of breach of condition as contemplated in Section 44A of the Land Acquisition Act? Section 44-A of the Land Acquisition Act reads as under:

"44-A Restriction on transfer, etc.-No

Company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government."

It is very clear from the section itself that the said section is attracted in the case of Companies only. Company is defined in clause (e) of section 3 of the Act. It reads as under:

"(e) the expression "Company" means--

(i) a company as defined in

Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc);

(ii) a society registered

under the Societies Registration Act, 1860, or under any corresponding law for the time being in

force in a State, other than a society referred to in clause (cc);

(iii) a cooperative society

within the meaning of any law relating to cooperative societies for the time being in force in a State, other than a society referred to in clause (cc)."

The petitioner is a committee constituted under the "Markets Act". Under sub section (1) of section 10 of the Markets Act, the petitioner-committee is a corporate and statutory body. Under sub section (2) of section 10, it is deemed to be a local authority within the meaning of clause 26 of section 3 of the Bombay General Clauses Act, 1904. Thus, the petitioner-Committee is not a Company to which section 44A of the Act would apply. Therefore, application of section 44A and alleged breach of condition is unwarranted by provisions of law and in particular, the Land Acquisition Act. As a consequence thereof, the action of the respondent no.1 to vest the land in the Government is bad and order Annexure "A" is required to be quashed and set aside. Assuming that section 44A is applicable, then, in that case also, the case of the petitioner-committee is not covered on facts. The petitioner committee while deciding to let out the land to Agro Industries Corporation Ltd. after passing the resolution of 30th December, 1971, sought necessary permission from the Collector. On the said resolution being communicated to the Collector, the Collector, Valsad has granted permission to let out the land vide his order of 29th December, 1972. The relevant part of the said letter of permission reads as under:

"Therefore, the Marketing Committee is

hereby granted permission to give the land bearing S.No.4B admeasuring 2A - 37 gs. situate at Gandevi, Taluka Gandevi, which is running in the name of the Gandevi Chikhali Marketing Agricultural Produce Committee to Gujarat Agro Industries Corporation Ltd, Navrangpura, Ahmedabad-14 for 99 years for installing the Canning Factory."

When a necessary permission was sought to let out the land to the said Gujarat Agro Industries Corporation,

the Collector had not come out with a case that it is not for him to grant permission, and the petitioner-Committee is required to approach the Government. On the contrary, the permission was granted by the Collector. Now, the successor Collector comes out with a case that no necessary permission has been obtained. In our opinion, the act of granting permission by the Collector estops the successor Collector from disputing the permission if at all permission was required. Even if the permission was required, what was required to be done by the petitioner committee, in our opinion, has been done by them. If one reads letter dated 4th November, 1972 addressed by the Collector to the petitioner-Committee, it is clear that it is the Collector who has initiated an idea in the mind of the petitioner-committee to grant lease to Gujarat Agro Industries Corporation. In that letter it is stated:

" It appears that this land is lying waste at present. Kindly confirm as to whether the committee itself is going to make use of the same. The Gujarat Agro Industries Corporation Ltd. has made demand for the said land."

Thereafter while passing the resolution the Committee has preambled as under:

" Read the letter dated 21-12-71 from the Gujarat Agro Industries Corporation Ltd. Agro Industries Cold Storage Ltd. a subsidiary of Gujarat Agro Industries Corporation Ltd. has decided to instal a canning factory in Gandevi. As the things specified by our Market Committee are to be canned, it is specifically beneficial to the peasants if the canning factory is installed in the yard only. As also, our land of sub-yard at Gandevi bearing S.No.4 situate on the National Highway is very suitable for this canning factory. Therefore, it is resolved....."

On qualitative reading of these two letters - one by the Collector and the other the Resolution of the Committee, it appears that it was the Collector who recommended to provide Gujarat Agro Industries Corporation with the land for installation of Canning Factory and picking up the suggestion by the Collector and the requirement of the Gujarat Agro Industries Corporation, the petitioner-Committee passed necessary resolution and sought permission of the Collector. The Collector granted the said permission and the land was parted with. Thus, it cannot be said that the grant of lease is either in breach of any of the condition of acquisition, much less, of Section 44A of the Act. Thus,

the order Annexure "A" is also liable to be quashed and under the provisions of Section 44A of the Act.

It is the Collector who has informed the petitioner-Committee that on instructions from the Government, the necessary orders of vesting land are passed. Despite the notice of the petition having been served and though the opportunity of filing affidavit-in-reply is availed of, the respondent no.1 is not coming forth with the necessary orders of the Government under which he alleges to have acted. In absence of such orders or directions coming on record, the only inference which can be drawn by the Court is that the act of the Collector is without authority.

In view of the above discussion, the order Annexure "A" dated 1st February, 1979 and the order Annexure "J" dated 6th June, 1980 returning back the Appeal/Revision to the petitioner and order Annexure "K" dated 28th September, 1984-the order as a consequence of the earlier two orders are without authority of law and are liable to be quashed and set aside.

In the result, the petition is allowed. Rule is made absolute with costs quantified at Rs.5000/-. The Collector-Avinashkumar who has passed the order Annexure "A" shall personally bear the cost. The respondent no.2-State is directed to recover the said cost from the respondent no.1. Compliance of recovery of cost be

reported to this Court within four weeks from today. Learned A.G.P. is directed to communicate the final order of this petition to the concerned Collector and the Government.

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